

Memorandum

MIAMI-DADE
COUNTY

Date: January 28, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Regional Conflict Counsel

B & F
Agenda Item No. 7 (A)

Revision 7 to Article V of the Florida Constitution, which was approved by voters in 1998, significantly altered the funding to the State Court System. One of the adjustments was to shift the funding responsibility for court-appointed attorneys from counties to the State. Court-appointed attorneys represent indigent criminal defendants where the Public Defender has a conflict of interest and may also represent indigent parents in dependency and termination of parental rights proceedings, as well as certain other civil proceedings.

The Florida Legislature passed SB 1088 during the 2007 regular session in an attempt to contain high costs related to criminal conflict and dependency and other civil proceeding counsel. SB 1088 created five Offices of Criminal Conflict and Civil Regional Counsel (Regional Counsel Offices) to provide this representation, which coincided with the five District Courts of Appeals statewide. The Governor has appointed a Regional Counsel for each of the five offices. In the state budget, the Legislature funded salaries to staff the five regional criminal conflict and civil counsel offices, including salaries for 47 positions for the Regional Counsel Office for Miami-Dade and Monroe Counties. SB 1088 defined the Regional Counsel Offices as part of the Public Defenders Offices, and in doing so, required counties to fund facilities, computers, equipment, and security for these offices. The Legislature appropriated \$2.2 million statewide for all 67 counties in one-time funds to partially offset the costs of facilities, equipment and computers statewide in the first year only. Estimates for providing private office space, equipment, computers and security in Miami for the 47-person Regional Counsel Office range from \$500,000 to \$2 million.

Over the summer, the Florida Association of Criminal Defense Lawyers (FACDL) filed a lawsuit asking that SB 1088 be declared unconstitutional under Article V of the Florida Constitution. FACDL asserted that the Regional Counsels are actually Public Defenders and that the appointment of Regional Counsels by the Governor under the provisions of SB 1088 violates provisions of the Florida Constitution that provide that there shall be a single Public Defender elected for a four-year term in each judicial circuit with assistants appointed by the Public Defender. FACDL's lawsuit refers to the Legislature's placement of the Regional Counsel Offices within the Public Defenders for the purpose of requiring counties to pay the facility, equipment, computer and security costs as indicating that the Legislature violated this constitutional provision. FACDL's lawsuit is currently pending, and no court decision has yet been issued.

Revision 7 to Article V of the Florida Constitution provides that no county is required to provide funding for court-appointed counsel. The intent document that accompanies Article V further indicates that the state is "wholly responsible" for funding court-appointed counsel. While no county has challenged this funding obligation in SB 1088, some counties, including Broward County, have determined that they will not provide facilities to the Regional Counsel Office. Other counties, including Palm Beach County, have agreed to provide facilities to the Regional Counsel Office pursuant to SB 1088.

Staff has been working with the Regional Counsel for Miami-Dade and Monroe Counties to identify facility needs. There is no space available in any of the Court facilities currently supported by the County. Based on the requirements established by the Office, we have identified space on the second floor of the Caleb Center, located at 5400 NW 22 Avenue, in District 3. This space was vacated by the Courts in order perform significant upgrades to the air conditioning system. Although demolition was performed, the upgrades were not; upon further evaluation it was determined that the needs in that community warranted an expansion of services, which will be accommodated in a new office tower on the site. The funding that would have been spent on the upgrades and renovations has been reallocated to the new facility.

It will cost an estimated \$1.3 million to finish the gutted space, including installation of mechanical, electrical, fire alarm, life safety, ceiling tiles, drywall, lighting and flooring. Please note that this will be an open space without partitions. Used systems furniture is available and the County's contracted vendor can install it for approximately \$30,000, depending on the layout. To provide the same level of security as the Public Defender, there would be a one-time cost of \$60,000 to purchase an x-ray machine and a recurring annual cost of approximately \$117,000 for the requisite security guards. We can relocate one of the magnetometers that had been utilized on the south side of the Stephen P. Clark Center.

Alternatively, leased space in a private building may be identified. Costs range from \$18.00-\$30.00 per square foot, for an annual rental payment, including operating costs of between \$150,000-\$300,000, depending on the size of the office and the negotiated terms. Security costs would be comparable to that required at Caleb, though the contracted guard amount would vary based on the layout of the office.

Because of the pending litigation and concern that State funding for this function was subject to reduction during the Special Session held by the Legislature in the Fall of 2007 to make budget reductions, funding for this support was not included in the FY 2007-08 Adopted Budget. At the direction of the Board, staff will proceed to dedicate funding to provide facilities to the Regional Counsel Office and include the appropriate adjustment in the mid-year budget amendment.



Jennifer Glazer-Moon, Director
Office of Strategic Business Management

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